

HCS SS SCS SB 5 -- CRIME

SPONSOR: Caskey (Mayer)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 14 to 1.

This substitute makes a variety of changes in the laws relating to crime.

CLONING

The substitute creates the crime of cloning a human being, a class B felony. Public employees also commit the crime when they knowingly allow the use of public funds by a person attempting to clone a human being.

ALTERING A PRESCRIPTION DRUG

The substitute creates the crime of tampering with a prescription drug, a class A felony. The crime is committed when a pharmacist sells an altered or diluted prescription drug with the intention of misleading the purchaser.

CORRECTIONS OFFICERS CERTIFICATION

The substitute establishes the Corrections Officers Certification Commission within the Department of Corrections and authorizes the department to create various classes of corrections officer certification.

OFFENDER DISCIPLINARY HEARINGS

The substitute clarifies that an administrative hearing granted to an offender regarding a violation of correctional facility rules is not considered a contested case and is not subject to appeal.

PRISON ADMINISTRATION

The substitute requires county sheriffs to provide the Department of Corrections with information regarding an incoming offender's physical and mental health, possible gang affiliation, and any restitution requirements or other conditions of probation. The department may refuse to accept a prisoner without all the required information.

Regarding other prison administration issues, the substitute:

- (1) Clarifies that the department may determine the nature and

duration of any alcohol or drug abuse treatment of offenders assigned to those programs by the court; and

(2) Removes the requirement that the Board of Probation and Parole provide probation services to the court for class A misdemeanor convictions for stealing and driving while intoxicated.

SENTENCING PROVISIONS

In its provisions regarding criminal sentencing, the substitute:

(1) Increases the penalty for endangering the welfare of a child in the first degree from a class D felony to a class C felony;

(2) Increases the penalty for stealing less than \$500 worth of materials used to manufacture methamphetamine from a class D felony to a class C felony;

(3) Decreases the penalty for a second stealing-related offense within a 10-year period from a class C felony to a class D felony; and

(4) Amends the definition of "dangerous felony" to include assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, statutory rape and statutory sodomy when the victim is under the age of 12, and abuse of a child when the abuse results in the death of the child.

ALTERNATIVE SENTENCING

In its provisions relating to alternative sentencing, the substitute:

(1) Allows the court to disregard the Board of Probation and Parole's recommendation for probation when the court determines that probation is not appropriate. Current law requires the court to find that it would be an "abuse of discretion" to grant probation to the offender;

(2) Allows an offender's first incarceration to not count as a prior conviction (in determining sentencing for a subsequent conviction) when the offender successfully completes drug or alcohol treatment and is granted probation;

(3) Allows an offender who has no prior prison commitments and who is convicted of a nonviolent class C or D felony to petition the court for probation, parole, or other alternative sentencing after serving 120 days of his or her sentence. The Department of

Corrections must submit a report to the sentencing court with its recommendations. The court may disregard the recommendations of the department, if the court finds that doing so would be inappropriate. A hearing will be conducted only if the court deems it necessary;

(4) Authorizes the board, at any time during the sentence imposed by the court, to place the offender in any combination of treatment, incarceration, supervised release, community service and restorative justice;

(5) Grants the board the authority to order the detention of an offender for up to 48 hours for violation of probation and parole, when the offender's probation or parole officer determines that the offender has violated a condition of probation or parole. Under current law, this detention requires a court order; and

(6) Requires the Sentencing Advisory Commission to examine all alternative sentencing programs and review how Missouri's sentencing practices compare with those of other states.

CRIMINAL FORFEITURES

The substitute requires each law enforcement agency receiving proceeds via the federal criminal forfeiture system to send a copy of its annual independent audit to the Department of Public Safety and prohibits the department from issuing funds to any law enforcement agency failing to comply.

BIFURCATED TRIALS

The substitute divides all criminal cases submitted to a jury into two stages. The jury must first determine whether the defendant is guilty or not guilty, then must decide upon a sentence after hearing evidence supporting or mitigating punishment.

COUNTY CRIME REDUCTION FUND

The substitute allows county commissions to create a county crime reduction fund and specifies how the moneys may be spent. The substitute:

(1) Allows the court to order individuals who have a suspended imposition or execution of sentence for a misdemeanor to make a payment of up to \$1,000 to the county crime reduction fund as a condition of probation;

(2) Prohibits judges from having any direct supervisory or

administrative control over the fund in their county; and

(3) Allows defendants to refuse probation that includes payments to a county crime reduction fund as a condition.

CIRCUIT JUDGESHIP

The substitute adds a circuit court judgeship to the 13th Circuit (Boone and Callaway counties) to be elected in 2006.

The substitute contains an emergency clause.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of a cost of Unknown to an income of \$8,199,325 in FY 2004, a cost of Unknown to an income of \$16,890,610 in FY 2005, and a cost of Unknown to an income of \$17,397,328 in FY 2006. Estimated Net Effect on State School Moneys Fund of \$0 in FY 2004, FY 2005, and FY 2006. Estimated Net Income to Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund of \$0 in FY 2004, \$2,015,423 in FY 2005, and \$2,015,423 in FY 2006.

PROPONENTS: Supporters say that the goal of the substitute as it passed the Senate is to make the state more efficient in its incarceration and rehabilitation of offenders. There are many people who are convicted of nonviolent crimes who could be more effectively supervised outside of a prison facility, while also creating a substantial savings for the state's taxpayers. At the current pace, by May of 2005, even with the new prisons in place, the state will be out of bed space, because the prison population is constantly growing. Many of these inmates being housed in prisons would be better served in treatment facilities (for their drug and alcohol abuse, which often leads to their criminal activity) or in some form of supervised probation, house arrest, or other form of alternative sentencing. For some offenders, exposure to prison for a relatively minor property crime can forever doom the person to a life of crime. The substitute will trim at least \$21 million each year from the cost of incarcerating inmates.

Testifying for the bill were Senator Caskey; Department of Corrections; Missouri Catholic Conference; Missouri Association for Social Welfare; and Fraternal Order of Police.

OPPONENTS: There was no opposition voiced to the committee.

Richard Smreker, Senior Legislative Analyst